

City of Alamo Heights
BOARD OF ADJUSTMENT
MINUTES
October 1, 2008

The Board of Adjustment held its regularly scheduled meeting in the Council Chambers at 6120 Broadway on Wednesday, October 1, 2008 at 5:30 p.m.

Members present and composing a quorum of the Board:

Bill Orr -Acting Chairman
Gregg Chislett
Grant McFarland
Susan Wilson
Andrew Herdeg, Alternate

Members Absent:

Hall Hammond, Alternate

Staff Members Present:

Ann McGlone, Community Development Director
Gracie Flores, Community Development Representative
Mike Brenan, City Attorney

The meeting was called to order by Mr. Orr at 5:35 p.m.

CASE NO. 1991

Brightleaf Partners, owner, represented by Lyndsay Thorn, architect, is requesting a variance to provide a front yard wall height of 6 ft. instead the required 3 ft. on property zoned MF-D. The applicant is proposing to construct a wall behind the mail box.

Ms. McGlone informed the Board that the applicant was not present.

A motion was made by Mr. McFarland to move Case Number 1993 to the end of the agenda to give the applicant an opportunity to show. The motion was seconded by Mr. Herdeg.

The motion was approved with the following vote:

FOR: Orr, Chislett, McFarland, Wilson, Herdeg

AGAINST: None

CASE NO. 1993

308 Torcido Dr., Dr. and Mrs. Paul Pace, owner, represented by Frank Burney, attorney, is requesting a variance(s) (after the fact) to provide 1) a front yard setback for an accessory structure/swimming pool of 6 ft instead of the required 30 ft., and 2) the following wall/fence heights in the front yard setback, a spa wall of 5 ft. 7 inches, a swimming pool affinity water wall of 7 ft.11 inches and a catch basin wall of 3 ft. 3 inches and a wrought iron fence of 4 ft. instead of 3 ft. on property zoned SF-A. A permit was issued and initial construction of the swimming pool started but was stopped once the setback and height encroachments were discovered.

Mr. Matt Stevens, landscape architect, Blue Hering Design, explained to the Board there was an extreme amount of elevation change on the property. Mr. Stevens informed the

Board that there is over 30 ft. of elevation change from the east property line down to Torcido Dr. Mr. Stevens stated that there was an existing stone wall in the front yard of the property that would retain the upper elevation to allow pedestrian access to the front of the residence. Mr. Stevens explained that he proposed to situate the swimming pool into the existing hillside and have the pool have the same elevation as the existing retaining wall. Mr. Stevens then stated that he would tie-in the swimming pool to the existing stone retaining wall with the use of adjoining stone retaining walls. Mr. Stevens stated that doing this will stabilize the existing grade.

Mr. Stevens informed the Board that another hardship was to preserve a 63 in. heritage live oak tree that is located on the south side of the property. Mr. Stevens explained that he consulted with an arborist, Ed Etter, who suggested that the swimming pool be located as far away from the critical root zone of the tree.

Mr. Stevens explained that the final hardship was due to the odd configuration of the property line. Mr. Stevens showed how the front property line has encroached to the front of the house which gives a limited amount of space for any structure to be placed. Mr. Stevens stated that this hardship, along with the elevation change and the live oak, left no other location for the pool to be placed. Mr. Stevens stated that a permit had been issued that approved construction of the swimming pool in the current location.

Ms. Wilson stated that there is existing encroachments into the critical root zone by the part of the residence that sticks out. Mr. Stevens stated that when the new house was built, there was minimal amount of pruning to the existing root system because the old house was built in the same location. Mr. Stevens explained that he used the Alamo Heights' Tree Ordinance to figure out the critical root zone. Ms. Wilson asked if the pool was in a different location now from what was originally permitted. Mr. Stevens explained that the pool is located per the previously approved plan. Mr. Herdeg asked if there were other possible locations for the swimming pool. Mr. Stevens explained that they wanted to keep the pool accessible to the house. Mr. Chislett asked if Mr. Stevens was unaware of the required setbacks that are stated in the City's Zoning Ordinance. Mr. Stevens stated that he was never told that the project would need to go to the Board of Adjustment for variance request. Mr. Stevens explained that he submitted for plan review and later obtained the building permit for that submittal. Mr. Stevens then gave the Board a letter from Ed Etter, the arborist that he consulted with.

Peggy Pace, owner, introduced herself and stated that her family is embarrassed at the attention that this project has brought to the City. Ms. Pace stated that her family is apologetic of the notoriety that the case has received. Ms. Pace explained that she knew a permit was required for construction but was unaware that a variance was needed. Ms. Pace informed the Board that every expert that she spoke with explained that the current location of the pool was best given the terrain, the lot shape, and the importance of the heritage Live oak.

Mr. Frank Burney, attorney representing Dr. and Mrs. Paul Pace, introduced himself to the Board. Mr. Burney reiterated the hardships that Mr. Stevens had previously stated. Mr. Burney explained that the Pace's had recessed the pool back into the side of the hill to ensure that it doesn't have a negative appearance from the street. Mr. Burney informed the Board that the Pace's have added significant landscaping and it is likely that it wouldn't be visible. Mr. Burney stated that the conditions that exist are not self imposed. Mr. Burney informed the Board that the courts have said that in residential properties, the homeowner has the right to recreate as much of their property as necessary for the enjoyment of their property. Mr. Burney explained that the location of a pool, tennis court, and barbeque pit are all fundamental rights that exist by the homeowner. Mr. Burney stated that if a variance is not granted, it will prevent the reasonable use of the property by the Pace's. Mr. Burney stated that there is a strong public interest supportive of the case according to the signatures that were obtained.

Ken Brown, attorney, representing Vernon and Kathy Friesenhahn, explained that although the Pace's have lot issues; there was a suitable location for the swimming pool. Mr. Brown stated Pace's had an approval from City Council with the swimming pool shown in a different location. Mr. Brown stated that he believed the applicant's were aware that they would need a variance.

Mark Neville, architect, stated that he agreed that the grade becomes more extreme as it approached Torcido Drive but felt that the pool location is actually in the more extreme grades of the property. Mr. Neville believed that the hardships are self imposed. Mr. Neville explained that although property owners have the right to use their land, as previously stated by Mr. Burney, there are certain restrictions and requirements that are imposed by municipalities that need to be respected.

Mr. Chislett asked if the previously submitted plan that was permitted in 2007 was approved. Ms. McGlone explained that the Pace's had gone before City Council for approval to demolish an existing house and presented plans that showed elevations as well as the proposed design for the new house. Ms. McGlone stated that a location for the pool was indicated on that submittal. Ms. McGlone explained how two years later, the applicant submitted plans to construct the pool at its present location and it was permitted. Ms. McGlone explained that the City issued a Stop Work Order upon realizing that the pool was in the setback and advised the applicant to submit a request to the Board of Adjustment for the variance. Ms. McGlone stated that a permit was issued erroneously.

Michelle Forry, horticulturist and certified arborist, explained that she was contacted by Vernon Friesenhahn, 300 Torcido, to come look at the Live oak heritage tree. Ms. Forry informed the Board that measuring within the crowned radius of the tree would be more efficient in finding the critical root zone since trees are different. Ms. Forry felt the biggest mistake was the major construction going on around the tree, which was causing root damage. Ms. Forry stated that even though the new house is at the same location, there was damage to the root system caused by slab foundation because the previous house sat on pier and beam. Ms. Forry reported that the house is located 19 ft. from the tree, the garage is 27

ft. from the tree, and is well within the critical root zone. Ms. Forry stated that the critical root zone extends way past the given measurements. Ms. Forry informed Board that the damage to the root system where the pool is located has already occurred and predicts that within the next few of years the damage will begin to show. Ms. Forry informed the Board that since extensive root damage has already occurred; there wouldn't be anymore damage by moving the pool closer to the tree. Mr. Chislett asked how far the tree drip line goes to the south side property line. Ms. Forry stated that it probably goes all the way to the neighbor's property but wasn't for sure. Mr. Chislett asked if anything could be done at this point to salvage the tree. Ms. Forry explained that regardless of the pool location, at this point, someone would need to use an air spade, do some vertical mulching, and tree injections with beneficial fungi in order to mitigate the damage. Mr. Dayton Archer, certified arborist, concurred with what Ms. Forry had previously stated about the root damage that has already occurred.

Ms. Kathy Friesenhahn, 300 Torcido, informed the Board that she was a longtime resident of Alamo Heights. Ms. Friesenhahn expressed her disappointment for the removal of the trees on the Pace's property. Ms. Friesenhahn requested that the variance not be granted.

Mr. Brown stated that he believed the hardships were self imposed. He then made a PowerPoint presentation concerning the Pace's application. Mr. Brown believed that the current location of the pool damaged the roots of the heritage tree and should now be moved back to where it was when approved by City Council. Mr. Brown believed that the pool was put there for aesthetic reasons. Mr. Brown stated that he did not believe that an erroneously issued permit should entitle the applicant to a variance. Mr. Brown explained to the Board that he did not believe the City has any liability in this matter. Mr. Brown concluded by stating that the applicants did not meet any findings of fact, created their own hardships and respectfully requested the variance not be granted.

Blake Bonner, 322 Westover Rd., stated that the pool changed the dynamics of Torcido. Tim Word, 401 Torcido, expressed his concern for home owners and their property rights. Mr. Burney stated that there were three legitimate hardships that existed and he felt that the applicants met every test.

After discussion, a motion was made by Mr. McFarland to approve the variances sought in Case Number 1993 as submitted. The motion was seconded by Ms. Wilson. Mr. McFarland and Ms. Wilson voted for the motion and Mr. Chislett, Mr. Orr, and Mr. Herdeg voted against the motion, thereby denying the variances requested and determining that the variances did not satisfy the requirements of state law and city code; that the public convenience and welfare would not be served by granting the variances; that the requested variances were not attributable to a special, unique condition inherent in the property itself; that the variances were not necessary to relieve an unnecessary and unjust hardship; and that the owners would not be denied the right to use their property without the requested variances.

The motion was denied with the following vote:

FOR: McFarland, Wilson

AGAINST: Chislett, Orr, Herdeg

CASE NO. 1994

107 Redwood St, The applicant is proposing to add a second floor storage area to an existing garage. Michael Embree, owner, represented by Jerry Mendenhall, architect, is requesting a variance to provide 1) a wall plate height of 15 ft. 2 in instead of the required 14 ft. and 2) a rear yard set back 3 ft. instead of the required 5 ft. on property zoned SF-A.

Mr. Michael Embree, owner, stated that he is a woodworker and used his garage as his workplace but needed the variance so that he could store lumber. There was extensive discussion about plate height and looming standards. Mr. Herdeg stated that other opportunities are available to capture more height in the structure without a variance request.

A motion was made by Mr. Herdeg to deny Case No. 1994. The motion was seconded by Mr. Chislett.

The motion was approved with the following vote:

FOR: Chislett, McFarland, Wilson, Herdeg

AGAINST: None

Mr. McFarland made a motion to continue Case No. 1991 to the November 2008 Board of Adjustment meeting. Mr. Herdeg seconded the motion.

The motion was approved with the following vote:

FOR: Orr, Chislett, McFarland, Wilson, Herdeg

AGAINST: None

Mr. McFarland made a motion to continue the September 10, 2008 minutes to the November 5, 2008 Board of Adjustment meeting. Ms. Wilson seconded the motion.

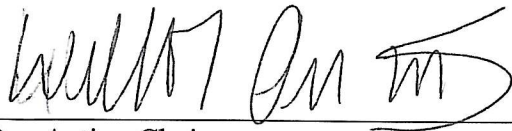
The motion was approved with the following vote:

FOR: Orr, Chislett, McFarland, Wilson, Herdeg

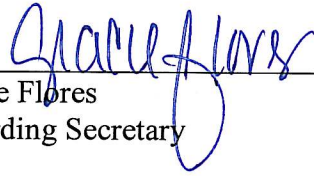
AGAINST: None

There being no further business, the meeting adjourned.

THE PROCEEDINGS OF THE BOARD OF ADJUSTMENT ARE ALSO RECORDED ON COMPACT. THESE MINUTES ARE THE OFFICIAL RECORD OF THE PROCEEDINGS CONTAINED HEREIN. THESE MINUTES ARE NOT A VERBATIM TRANSCRIPT OF THE PROCEEDINGS AND DO NOT PURPORT TO INCLUDE ALL EVIDENCE PRESENTED OR STATEMENTS MADE.



Bill Orr, Acting Chairman



Gracie Flores
Recording Secretary



Date Signed & Filed